

SUBCHAPTER 2

AUTHORITY TO DEBAR OR SUSPEND

§3-126-11 Application. This subchapter applies to the debarment or suspension of persons from consideration for award of all public contracts and from performance on any public contract. [Eff 12/15/95; am and comp NOV 25 2002]
(Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§3-126-11.01 Other causes for debarment or suspension.

(a) Debarment procedures shall be initiated for any person committing an act, after the effective date of this section, for which that person is subsequently assessed an administrative fine of \$5,000 or more by the campaign spending commission under section 11-228, HRS, or convicted of a violation under section 11-229, HRS.

(b) "Person" for the purposes of this section shall be as defined under section 11-191, HRS.

(c) The campaign spending commission shall provide the administrator of the state procurement office a listing of all persons fined or convicted, to include the date of the violation and date the fine or conviction was imposed.

(d) The procurement officer shall, prior to award, verify the offeror's eligibility under subsection (a).

[Eff 11/03/03] (Auth: HRS §103D-202) (Imp: HRS §103D-702)

§3-126-12 Suspension. (a) After consultation with the affected purchasing agency, the respective attorney general or corporation counsel, and, where practicable, the person who is to be suspended, and upon written determination by the chief procurement officer or designee that probable cause exists for debarment as set forth in section 103D-702, HRS, that person shall be suspended.

(b) A notice of suspension, including a copy of the determination, shall be sent to the suspended person stating that:

- (1) The suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but shall not exceed three months unless the chief procurement officer or designee determines in writing that additional time is necessary to complete the

investigation;

- (2) Bids or proposals will not be solicited from the suspended person, and if they are received, they will not be considered during the period of suspension; and
- (3) The suspended person may request a review in accordance with section 3-126-14.

(c) The notice of suspension shall signal the start of the investigation for debarment.

(d) A person is suspended upon issuance of the notice of suspension. The suspension will remain in effect during any appeals and may be terminated by the chief procurement officer or designee, an administrative hearings officer, or by a court, but otherwise shall only end when the suspension has been in effect in accordance with section 3-126-12(b)(1) or a debarment decision takes effect. [Eff 12/15/95; am and comp **NOV 25 2002**] (Auth: HRS §§103D-202, 103D-702, 103D-709) (Imp: HRS §§103D-702, 103D-709, 103D-710)

S3-126-13 Notice of debarment action.

(a) Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the person and shall:

- (1) State that debarment is being considered;
- (2) Set forth the reasons for the action;
- (3) State that if the person so requests, a review will be conducted, provided the request is received by the chief procurement officer or designee within ten working days after the person receives notice of the proposed action; and
- (4) State that the person may be represented by counsel.

(b) The notice shall be sent to the respective attorney general or corporation counsel and the affected purchasing agency. If more than one purchasing agency is involved, the chief procurement officer or designee may designate one or more representatives to be consulted in respect to this action. [Eff 12/15/95; am and comp **NOV 25 2002**] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

S3-126-14 Review by a chief procurement officer or designee. (a) A person notified of a proposed debarment action may request in writing that a review be conducted. The request must be received by the official proposing the action within ten working days of receipt of notice of the proposed action under section 3-126-12 or 3-126-13. The request for review

shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) If no request is received within the ten working day period, a final determination may be made as set forth in section 3-126-16 after consulting with the respective attorney general or corporation counsel and the affected purchasing agency.

(c) If a review is requested, the chief procurement officer may appoint a designee to conduct the review and recommend a final decision. Otherwise, the chief procurement officer shall conduct the review.

(d) The chief procurement officer or designee shall send a written notice to the person within fifteen working days of the request for review. The written notice shall be sent by certified mail, return receipt requested, and shall state the time and place, and the nature and purpose of the proceedings. Copies shall be sent to the respective attorney general or corporation counsel and the purchasing agency.

[Eff 12/15/95; am and comp NOV 25 2002] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§3-126-15 Review procedures. (a) The review shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements completed within sixty days from the date set for the review.

(b) The weight to be attached to evidence presented will be within the discretion of the review officer. The review officer may require evidence to that offered by the parties. [Eff 12/15/95; am and comp NOV 25 2002] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§3-126-16 Determination of the review officer. (a) The review officer shall prepare a written determination recommending a course of action. Copies shall be sent to all affected parties, including the person under consideration for debarment, the respective attorney general or corporation counsel, and the affected purchasing agency.

(b) The person under consideration for debarment shall have ten working days to file comments upon the review officer's determination. The chief procurement officer or designee may request oral argument.

(c) After consultation with the affected purchasing agency and the respective attorney general or corporation counsel, the chief procurement officer or designee shall issue a final decision. Both the

review officer's determination and the final decision shall recite the evidence relied upon.

(d) When debarment is recommended or ordered, the length of the debarment, not to exceed three years, the reasons for such action, and to what extent affiliates are affected shall be set forth. In addition, the final determination shall inform the debarred person of the right to commence an administrative proceeding under subchapter 5. [Eff 12/15/95; am and comp NOV 25 2002] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§3-126-17 Effect of debarment decision. A debarment decision will take effect upon issuance and receipt by the debarred person. After the debarment decision takes effect, that person shall remain debarred until a court or the chief procurement officer, or designee who issued the decision, orders otherwise or until the debarment period specified in the decision expires. [Eff 12/15/95; am and comp NOV 25 2002] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§3-126-18 List of debarred and suspended persons. (a) The chief procurement officer shall send a copy of the decision to debar or suspend a person to the administrator of the state procurement office who shall compile and distribute a list to all chief procurement officers of the State and post the list on the state procurement office's website. Each chief procurement officer shall send the list and updates of the list to all purchasing agencies.

(b) Should a debarred or suspended person have a contract awarded prior to the effective date of the list, the chief procurement officer shall make a written determination as to whether to allow a debarred or suspended contractor to continue performance on that contract. [Eff 12/15/95; am and comp NOV 25 2002] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§§3-126-19 to 3-126-24 (Reserved).